

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals,
Peter D. O'Connell (Presiding Judge), Patrick M. Meter, and Michael F. Gadola

CLAM LAKE TOWNSHIP, a Michigan
general law township; and HARING
CHARTER TOWNSHIP, a Michigan
charter township,

Supreme Court No. 151800

COA Docket No. 325350

Appellants,

V

Wexford County Circuit Court Case
No. 14-25391-AA

DEPARTMENT OF LIENSING AND
REGULATORY AFFAIRS/STATE
BOUNDARY COMMISSION, a state
administrative agency; TERIDEE LLC, a
Michigan limited liability company; and,
THE CITY OF CADILLAC, a Michigan home
rule city,

State Boundary Commission
Docket 13-AP-2

Appellees.

**AMICUS CURIAE BRIEF OF THE MICHIGAN TOWNSHIPS
ASSOCIATION IN SUPPORT OF THE APPELLANTS
CLAM LAKE TOWNSHIP AND HARING CHARTER TOWNSHIP**

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STATEMENT OF JURISDICTION

On June 3, 2016, this Honorable Court issued an Amendment to Order granting leave to appeal.¹ In its Order this Honorable Court directed that the parties brief:

“(1) whether *Casco Twp v State Boundary Comm’n*, 243 Mich App 392, 399 (2000), correctly held that the State Boundary Commission (SBC) has the authority to determine the validity of an agreement made pursuant to the Intergovernmental Conditional Transfer of Property by Contract Act, 1984 PA 425, MCL 124.21 *et seq.* (Act 425); (2) if so, whether the SBC in this case properly determined that the appellant townships’ Act 425 Agreement was invalid; and (3) whether, despite the language of MCL 117.9(6) and MCL 125.1012(3) (providing a two-year waiting period before resubmission of a petition for annexation), the doctrine of collateral estoppel applied to invalidate the SBC’s 2014 approval of the appellee property owner’s petition for annexation on the basis of the SBC’s denial of the same property owner’s petition in 2012.”

This Amicus Brief is submitted by Amicus Curiae Michigan Townships Association pursuant to MCR 7.312(H).

¹ Clam Lake Twp v Department of Licensing and Regulatory Affairs, 2016 WL 3128362 (June 3, 2016).

STATEMENT OF QUESTION PRESENTED

1. WHETHER CASCO TWP V STATE BOUNDARY COMM’N, 243 MICH APP 392, 399 (2000), INCORRECTLY HELD THAT THE STATE BOUNDARY COMMISSION HAS THE AUTHORITY TO DETERMINE THE VALIDITY OF AN AGREEMENT MADE PURSUANT TO THE INTERGOVERNMENTAL CONDITIONAL TRANSFER OF PROPERTY BY CONTRACT ACT, 1984 PA 425?

The State Boundary Commission answered: "No".

The Circuit Court answered: "No".

The Court of Appeals did not decide this question.

The Appellants answer: "Yes".

The Appellees answer: "No".

Amicus Curiae Michigan Townships Association answers: "Yes".

STATEMENT OF FACTS

Amicus Curiae, Michigan Townships Association, concurs with and hereby adopts Appellants' Statement of Facts as contained in the Appellants' Brief on Appeal and Counter-Statement of Facts in Appellants' Reply Briefs.

STATEMENT OF INTEREST OF AMICUS CURIAE AND INTRODUCTION

The Michigan Townships Association (MTA) is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. The MTA, established in 1953, is widely recognized for its years of experience and knowledge with regard to municipal issues. Through its Legal Defense Fund, the MTA has participated on an amicus curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships. Pursuant to Michigan Court Rule 7.312(H)(2), the MTA consists of “an association representing a political subdivision”. The amicus curiae brief in this matter is authorized by the MTA to edify and assist this Honorable Court's consideration of this important case.

Amicus Curiae strongly believes that this case presents issues of major statewide significance to Michigan municipalities by impacting their ability to effectively enter into intergovernmental conditional transfers of property for economic development as set forth in the comprehensive statutory scheme of Public Act 425 of 1984.² Amicus Curiae contends that an intended purpose of PA 425³, as supported by its plain language, was to preempt any jurisdiction that the State Boundary Commission would otherwise have regarding annexation for any portion

² Intergovernmental Conditional Transfer of Property by Contract Act, MCL 124.21 et seq; also referred to herein as PA 425.

³ See page 9 herein, Senate and House Legislative Analysis introduction to “The Apparent Problem” submitted to the legislators for their information in considering the enactment of PA 425. PA 425 was enacted to allow for amicable cooperative contracts for the transfer of jurisdiction of property between local municipal units as an alternative to the State Boundary Commission or other procedures for the transfer of jurisdiction.

of an area transferred under a PA 425 contract.⁴ These cooperative economic development 425 contracts are legislatively entered into through mutual cooperation between cities, townships, and villages and are specifically intended to be protected from divisive outside interference.⁵ In this regard, PA 425 provides that:

“While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.”⁶ (Emphasis added)

In spite of this very clear and unambiguous language, jurisprudence in Michigan regarding the State Boundary Commission’s authority to determine the validity of PA 425 contracts has been co-opted and led astray by specious analysis contained in the Michigan Court of Appeals case of Casco Twp.⁷ With very little analysis of the statutory language or intent of PA 425, the Court of Appeals in Casco Twp. held that the State Boundary Commission had authority and jurisdiction to decide the validity of PA 425 contracts.⁸ Casco Twp. improperly expanded the jurisdiction of the State Boundary Commission⁹ and directly thwarted the efforts of PA 425 to create a

⁴ It should be noted that this preemption also covers any other types of annexation, detachment or other transfers of such property that would not otherwise go before the State Boundary Commission (MCL 124.29, *infra*).

⁵ It should be noted that PA 425 contracts are subject to a local right of referendum and such right of referendum follows the statutory scheme of local control.

⁶ MCL 124.29.

⁷ Casco Twp v State Boundary Comm’n, 243 Mich App 392; 622 NW2d 332 (2000), app den, 465 Mich 855; 632 NW2d 145 (2001).

⁸ Casco Twp, *supra* at 399.

⁹ As will be discussed later, the State Boundary Commission only has delegated authority over municipal boundaries under certain circumstances pursuant to Public Act 191 of 1968 (PA 191) and does not have plenary authority in this regard. Alternate methods of annexation are provided by the Charter Township Act (MCL 42.34), annexation by villages of township territory pursuant to MCL 74.6 and MCL 78.2 and for detachment proceedings. These other methods have no connection to the State Boundary Commission. The court in Casco Twp wrongfully found broad plenary powers of the State Boundary Commission over annexation and subsequent authority to invalidate 425 contracts. There is in fact no specific authority in any state law for the State Boundary Commission to exercise any authority over the validity of 425 contracts and to decide

cooperative alternative to, among other things, State Boundary Commission annexation proceedings. It is incomprehensible to read MCL 124.29 as an invitation for the State Boundary Commission to review the validity of PA 425 contracts, with the ability to nullify and void such contracts.

The State Boundary Commission has no statutory role or involvement regarding PA 425 contracts, however due to Casco Twp., the State Boundary Commission has been inserted front and center. The State Boundary Commission substitutes its opinion of the proposed economic development project over the local municipalities' determination in this regard. This misapplication of the law and unauthorized expansion of authority cannot be more shockingly highlighted by the fact that the State Boundary Commission has never upheld a PA 425 agreement that it has been asked to invalidate.¹⁰ As in the case at bar, the State Boundary Commission improperly exercised jurisdiction that does not exist in order to invalidate a statutorily compliant PA 425 contract that was "in effect".¹¹ This case highlights a total subversion of the PA 425 process and demonstrates a clear disconnect with its intent and statutory language. The time has come for Casco Twp to be overturned by this Honorable Court.¹² Consider under the Casco Twp specious logic that a PA 425 contract for fifty years could be approved by the local voters at referendum and acted on between the parties but then set aside 20 years later by the State Boundary Commission under the pretext of an annexation attempt. This potential result is both offensive and absurd. Consider further that village

otherwise violates the principle of strict construction of administrative authority. (See Lake Isabella, *infra*).

¹⁰ Appellants' Brief on Appeal, p 11.

¹¹ The transfer of jurisdiction occurs upon the filing of the contract and such filed document is *prima facie* evidence of the transfer as provided for in MCL 124.30, *infra*.

¹² The denial of leave in Casco Twp. does not bind this Honorable Court and has no precedential value. See Tebo v Haulik, 418 Mich 350, 363, n2; 343 NW2d 181 (1984).

annexation of township territory which goes to review by the County Board of Commissioners would place the County Board also in the position of reviewing the validity of a PA 425 contract under the false logic used in Casco Twp. This certainly was never intended. Forum shopping should not exist with regard to PA 425 contracts and any challenge to the validity of a PA 425 contract should originate with de novo review in Circuit Court with an appeal of right to the Court of Appeals.¹³ Amicus Curiae is confident that when this Honorable Court reviews the relevant statutory language, and the arguments herein, jurisprudence on this issue will be set right.¹⁴

ARGUMENT¹⁵

1. CASCO TWP V STATE BOUNDARY COMM'N, 243 MICH APP 392, 399 (2000), INCORRECTLY HELD THAT THE STATE BOUNDARY COMMISSION HAS THE AUTHORITY TO DETERMINE THE VALIDITY OF AN AGREEMENT MADE PURSUANT TO THE INTERGOVERNMENTAL CONDITIONAL TRANSFER OF PROPERTY BY CONTRACT ACT, 1984 PA 425.

A. STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo.¹⁶ Furthermore, subject matter jurisdiction is a question of law reviewed de novo.¹⁷ Therefore, in the case at bar, the review of these issues by this Honorable Court is de novo.

¹³ Questions on the interpretation of a contract are reviewed de novo. Rory v Continental Ins. Co., 473 Mich 457; 703 NW2d 23 (2005). Circuit Courts have original jurisdictions over civil claims, unless otherwise provided by statute or constitution. MCL 600.605. See also Detroit Automobile Inter-Insurance Exchange v Maurizio, 129 Mich App 166; 341 NW2d 262 (1983).

¹⁴ Amicus Curiae fully supports the excellent arguments of Appellants in the Brief on Appeal and reply briefs and through the arguments herein attempts to not be overly repetitious. As such, Amicus Curiae only addresses the State Boundary Commission jurisdiction question.

¹⁵ See also introductory comments to be incorporated herein as contained in the Statement of Amicus Interest and Introduction, supra.

¹⁶ Hillsdale County Senior Services, et al v County of Hillsdale, 494 Mich 46, 51; 832 NW2d 728 (2013).

B. GENERAL RULES OF STATUTORY INTERPRETATION

The issue before this Honorable Court turns on statutory interpretation. "The primary goal of statutory interpretation is to give effect to the intent of the Legislature."¹⁸ "The first step in that determination is to review the language of the statute itself."¹⁹ "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed and judicial construction is neither required nor permissible."²⁰ Courts "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory."²¹ Courts "interpret th[e] words in [the statute in] light of their ordinary meaning and their context within the statute and read them harmoniously to give effect to the statute as a whole."²² "[I]n seeking meaning, words and clauses will not be divorced from those which precede and those which follow."²³ "Statutory interpretation requires courts to consider the *placement* of the critical language in the statutory scheme."²⁴

"All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning".²⁵

¹⁷ Lapeer Co Clerk v Lapeer Circuit Judges, 465 Mich 559, 466; 640 NW2d 567 (2002); Hillsdale, *supra*.

¹⁸ In re: MCI Telecommunications, 460 Mich 396, at 411; 596 NW2d 164 (1999).

¹⁹ In re: MCI Telecommunications, *supra*, 411.

²⁰ In re: MCI Telecommunications, *supra*, 411.

²¹ Johnson, *supra*, 177 citing State Farm Fire & Cas. Co. v. Old Republic Ins. Co., 466 Mich. 142, 146; 644 N.W.2d 715 (2002).

²² Johnson, *supra*, 177 citing People v. Peltola, 489 Mich. 174, 181; 803 N.W.2d 140 (2011).

²³ Sanchick v. State Bd. of Optometry, 342 Mich. 555, 559; 70 N.W.2d 757 (1955).

²⁴ Johnson, *supra*, 177 citing United States Fidelity & Guaranty Co. v. Mich. Catastrophic Claims Ass'n (On Rehearing), 484 Mich. 1, 12; 795 N.W.2d 101 (2009).

²⁵ Briggs Tax Service, LLC v Detroit Public Schools, et al, 485 Mich 69, 77, 780 NW2d 753 (2010), citing MCL 8.3a;

This Honorable Court has articulated a contextual principle regarding ambiguity as follows:

"Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: '[i]t is known from its associates,' see Black's Law Dictionary (6th ed.), p. 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." Brown v Genesee Co. Bd. of Comm'rs (After Remand), 464 Mich 430, 437, 628 NW2d 471 (2001), quoting Tyler v Livonia Schs, 459 Mich 382, 390-391, 590 NW2d 560 (1999)²⁶.

In addressing the threshold question of ambiguity, this Honorable Court has held that:

"A term is ambiguous 'when it is *equally* susceptible to more than a single meaning,' Lansing Mayor v Pub. Service Comm., 470 Mich 154, 166, 680 NW2d 840 (2004), not when reasonable minds can disagree regarding its meaning."²⁷ Further, "ambiguity is a finding of last resort".²⁸

Armed with the above rules of statutory interpretation, the following textual analysis of the relevant statutory language and in particular MCL 124.29 and MCL 124.30 will show that the statutory language is not ambiguous and, that it in fact provides plain direction prohibiting consideration of the validity of a PA 425 contract from any jurisdiction of the State Boundary Commission annexation consideration. If all pertinent statutory provisions are read in context, and in harmony with one another, this Honorable Court will clearly see that the expansion of the jurisdiction of the State Boundary Commission over the validity of a PA 425 contract is an unsupportable misapplication of the law. There can be found no intent of the legislature to grant such authority and such jurisdiction has essentially come out of thin air. The State Boundary Commission need only have a jurisdictional check the box as to whether a PA 425 contract is "in

²⁶ Koontz v Ameritech Services, Inc., 466 Mich 304, 317-318; 645 NW2d 34 (2002).

²⁷ Toll Northville Ltd., v Township of Northville, 480 Mich 6, 15 fn 2; 743 NW2d 902 (2008).

²⁸ Lansing Mayor, supra at 165, citing Klapp v Limited Insurance, 468 Mich 459, 474; 663 NW2d 447 (2003)(Emphasis added).

effect” over the subject property. If the box is checked “yes”, the annexation petition is rejected for lack of jurisdiction. In properly addressing this issue the following will first look at the historical background of the State Boundary Commission and PA 425.

C. **HISTORICAL BACKGROUND OF STATE BOUNDARY COMMISSION ANNEXATION JURISDICTION AND PA 425**

In order to properly analyze and understand the subject matter jurisdiction of the State Boundary Commission, it is important to begin with a historical review. In review of this historical background, this Honorable Court has previously indicated that:

“The boundaries of a unit of local government affect the tax base of the unit, the tax rate of its residents, the level of services provided to residents, and the potential for further development of the unit. Issues regarding annexations of part of a local unit to another therefore tend to be politically volatile. . . .

* * *

Prior to 1970, all annexations had to be approved by the electors of the affected district, which was defined as ‘the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed,’ (citations omitted). A majority vote in favor of the annexation was required, first, in the area to be annexed, and, second, in the remainder of the affected district ‘voting collectively.’ (citation omitted). These referenda elections frequently generated a great deal of divisiveness and litigation. . . .”²⁹

In 1968 the State Boundary Commission was created (Public Act 191 of 1968; MCL 123.1001 et seq.) Interestingly, at creation, the State Boundary Commission did not have any powers related to annexation. In 1970, pursuant to compromise between the Michigan Townships Association, the Michigan Municipal League and the State Boundary Commission, legislation was introduced and subsequently enacted giving the State Boundary Commission certain authority over

²⁹ Shelby Charter Township v State Boundary Comm’n, 425 Mich 50, 56-58; 387 NW2d 792 (1986) (citations omitted as referenced).

annexations by home rule cities.³⁰ This process was intended to resolve some of the divisiveness created by annexation of territory from a township or village to a home rule city.

As indicated by this Honorable Court:

“Under the 1970 amendment giving the commission authority over annexations, §9 of the Home Rule Cities Act, M.C.L. §117.9; M.S.A. §5.2088, became the exclusive means of ‘annexation of territory from a township or village to a home rule city,’ M.C.L. §117.9(11); M.S.A. §5.2088(11).”³¹

This compromise legislation was no in way intended to provide plenary authority to the State Boundary Commission regarding all things involving boundaries and annexations. There was still retained a referendum right for certain larger annexations and State Boundary Commission authority only extended over home rule city annexation. Specifically, the State Boundary Commission Act provides for its limited jurisdiction as follows:

“The commission shall have jurisdiction over petitions or resolutions for annexation as provided in section 9 of Act No. 279 of the Public Acts of 1909, as amended.”³²

The jurisdiction granted to the State Boundary Commission by this compromise legislation has since been notably reduced through subsequent compromise legislation intended to address certain problems arising from this jurisdiction. One circumstance involved charter townships and the other involved conditional transfers of jurisdiction by municipal contract.

First, in 1977, House Bill 4030 was introduced to exempt charter townships from annexation:

“The problem HB 4030 was intended to remedy was described as follows:
‘Charter township law does not prevent a portion of a charter township from being incorporated as a city or village or from being annexed to a city or village.
In the past, in most cases where a portion of a charter township was annexed by a

³⁰ Shelby Charter Twp., supra, 59.

³¹ Shelby Charter Twp., supra, 59-60 (footnote and citations omitted).

³² MCL 123.1011a. Said Section 9 is in reference to MCL 117.9 of the Home Rule City Act regarding annexation of territory from a township or village to a home rule city.

city, the part that was annexed included a valuable tax base such as an industrial facility or shopping complex. When this happens repeatedly, the township is fragmented, sometimes even broken up into non-adjacent enclaves. Further, the township loses its tax base and finds it nearly impossible to supply needed municipal services to its remaining residents. Some persons believe that if charter townships are to remain as a viable system of local government, they must be protected from such encroachment by adjacent cities.’ House Legislative Analysis Section, First Analysis HB 4030 (March 3, 1977).”³³

Through compromise legislation, the resultant statute that was ultimately enacted vastly limited the State Boundary Commission’s jurisdiction with regard to annexation of property located in a charter township. While not a complete exemption from all annexation as originally proposed, MCL 42.34 of the Charter Township Act (Public Act 359 of 1947) provides annexation protection for charter townships existing on June 15, 1978 with limited exception and for those that were incorporated after June 15, 1978 similar protection was provided if they meet certain specified exemption standards therein.³⁴ The only jurisdiction remaining with the State Boundary Commission is limited to elimination of free standing islands of property or to align boundaries.³⁵ It should be noted that when the legislature intended to preserve limited jurisdiction of the State Boundary Commission with regard to charter township annexation, it did so through express language in statute. As we will see with PA 425, no such reservation of jurisdiction was expressed.

In order to encourage cooperative economic development between local units, further limitation on the State Boundary Commission’s annexation jurisdiction was formulated through PA 425. Both the senate and house legislative analysis submitted to the legislators for their

³³ Shelby Charter Twp., supra, 62-63.

³⁴ MCL 42.34 provides the general exemption language for annexation in Section 34(1) and only retains State Boundary Commission annexation authority over portions of a charter township pursuant to Section 34(2). Further, one of these exemption standards, MCL 42.34(1)(f), was deemed ambiguous and the subject of litigation in Shelby Charter Twp., supra.

³⁵ MCL 42.34(2)

information in considering the enactment of PA 425 included the following introduction to “The Apparent Problem”:

“In 1979, officials at the General Motors plant in Flint wanted to expand their plant, but there was no vacant land within the city to accommodate such plans. Genesee Township had a vacant industrial park about a mile from the city which was adequate to accommodate the proposed new plant, and General Motors decided to pursue the possibility of getting that land. The ensuing effort by General Motors resulted in the city and township getting together and working out a contractual arrangement whereby the township would transfer the land to the city in exchange for a share of the tax revenue. Although many persons agreed that this unique cooperative approach to the transfer of property between local units of government was laudable, some questioned the legality of such an arrangement and believed the agreement could have been challenged in court on the grounds that the agreement skirted the authority of the State Boundary Commission, which has statutory jurisdiction over matters pertaining to municipal boundary adjustments, and also because [the] statute does not specifically provide authority for such arrangements between local units. Although these problems never materialized because the recession made it necessary for General Motors to abandon the expansion plans, some persons believed Michigan law should provide for such arrangements.” (Emphasis added)

The proposed City of Flint/Genesee Township conditional transfer agreement formed the basis for the PA 425 legislation providing a friendly method of economic development as distinguished from forced annexation. The legislation as indicated was clearly intended to remove jurisdictional control from the State Boundary Commission regarding these conditional transfer contracts. As it exists, PA 425 contracts provide for an alternative to annexation of township territory to a city or village. As will be discussed in more detail, PA 425 allows for contracts between local units which include a city, township or village, for economic development and protection of the environment. These contracts can extend for up to 50 years subject to renewal for an additional period of not to exceed 50 years. A public hearing is required to be held by each local unit before entering into such a contract. The contract is also subject to challenge by referendum upon an appropriate petition being filed with the clerk of the local unit in which the property is located. These are truly local contracts mutually agreed upon

for economic development such as the proposed City of Flint/Genesee Township conditional transfer agreement. The obvious importance of allowing local governmental units to enter into such agreed upon arrangements protected from future annexation attempts or other types of transfers is powerfully and clearly expressed in Section 9 of PA 425 which provides that:

“While a contract under this section is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.”³⁶

The historical intent of this provision, in light of the City of Flint/Genesee Township situation, is clearly to allow the local legislative bodies to enter into PA 425 conditional transfer contracts free from interference or control of the State Boundary Commission. Annexation disputes over such areas would subvert the intent of PA 425 and undermine the plan for economic development in the contracts thereunder. These cooperative contracts are an alternative to forced annexation battles. This legislation intentionally reserved no authority for the State Boundary Commission to review the validity of PA 425 contracts. The State Boundary Commission has no role in any regard in the 425 contract process.

The State Boundary Commission’s jurisdiction over home rule city annexations was achieved through compromise between the parties involved; the power grab by the State Boundary Commission (claimed jurisdiction to determine the validity of PA 425 agreements) is both contrary to this compromise and contrary to the history of the subsequent legislative restrictions. Likewise, this claimed jurisdiction is offensive to the sound jurisprudence of the state. The Court in Casco Twp failed to consider any history of this issue and did not address the intent of the PA 425 legislation. Its erroneous analysis has led jurisprudence on this subject of

³⁶ MCL 124.29.

jurisdiction far off course, as is highlighted in the case at bar and as further discussed in Appellant Townships' Briefs.

The following review of the statutory scheme established under PA 425 will demonstrate that there is nothing in any statutory language which would purport to give the State Boundary Commission subject matter jurisdiction over the validity of a PA 425 contract. Such jurisdiction cannot be created out of thin air or by an aggressive municipality's wishful thinking. The State Boundary Commission's overstepping of its jurisdiction has led to no contested PA 425 agreement ever having been found valid by the State Boundary Commission since Casco Twp.³⁷ It is time that this error in jurisprudence is rectified.

D. ANALYSIS OF LANGUAGE USED IN PA 425

Consistent with this historical background and the general rules of statutory interpretation, PA 425 provides a comprehensive procedure for the conditional transfer of the jurisdiction of property separate and distinct from annexation. There is no language expressed in this public act which provides the State Boundary Commission with any authority to adjudge the validity of a PA 425 contract and set it aside. As discussed, the State Boundary Commission's annexation jurisdiction is actually quite limited.³⁸ Accordingly, it is important to review the comprehensive nature of PA 425 and the plain unambiguous language therein.

PA 425 allows two or more cities, townships, or villages to conditionally transfer property by written contract for a period of not more than 50 years (plus renewal periods not to

³⁷ Appellants' Brief on Appeal, p 11.

³⁸ As previously indicated, there are also many other annexation, detachment and jurisdictional transfer statutes that do not involve the State Boundary Commission and that are also preempted by MCL 124.29.

exceed 50 years) for the purpose of an economic development project.³⁹ It is critical to keep in mind that a cooperative PA 425 contract entered for this purpose between local units is intentionally designed to skirt the jurisdiction of the State Boundary Commission and thereby avoid otherwise ensuing annexation battles.

Under MCL 124.21 Definitions.

“Economic development project” means land and existing or planned improvements suitable for use by an industrial or commercial enterprise, or housing development, or the protection of the environment, including, but not limited to, groundwater or surface water. Economic development project includes necessary buildings, improvements, or structures suitable for and intended for or incidental to use as an industrial or commercial enterprise or housing development; and includes industrial park or industrial site improvements and port improvements or housing development incidental to an industrial or commercial enterprise; and includes the machinery, furnishings, and equipment necessary, suitable, intended for, or incidental to a commercial, industrial, or residential use in connection with the buildings or structures.”

This language is broad yet defined. There is no claimed ambiguity in this definition. There is nothing in PA 425 that expressly or implicitly grants the State Boundary Commission authority to decide whether the PA 425 contract adequately provides for an economic development project.

A great deal of consideration goes into a PA 425 contract by the local units. When formulating a contract, cities, townships, or villages must consider a number of specific factors including, among other things, population density; land area and land uses; valuations; past and probable future growth; cost and adequacy of governmental services in the area to be transferred; the probable future needs for services; the probable effect of the proposed transfer; the probable change in taxes and tax rates in the area to be transferred in relation to the benefits expected; and the financial ability of the local unit responsible for services in the area to provide and maintain

³⁹ MCL 124.22.

those services.⁴⁰ Additionally, the parties to PA 425 contracts must also consider the general effect upon the local units of the proposed actions; and the relationship of the proposed action to any established city, village, township, county, or regional land use plan.⁴¹

The legislative bodies weigh many factors that go into their decision regarding the written contract. PA 425 contracts are not just entered into on a whim. Moreover, MCL 124.24 provides for at least one public hearing by each local unit and approval by their legislative bodies. This allows the parties to consider public opinion and ultimately reach a legislative decision. This comprehensive statutory scheme goes on to allow ultimate local input in MCL 124.25 by setting forth a process for referendum requiring an election to approve the transfer and the entry of the contract. Certainly, without express authority, the State Boundary Commission cannot reasonably claim to have the jurisdiction to review a PA 425 contract and override the vote of the electorate by invalidating the contract. Such a result would be absurd in light of the historical intent of PA 425 and its comprehensive statutory scheme.

With regard to the written contract itself, MCL 124.26 provides that a contract may contain any of the following if applicable:

- “(a) Any method by which the contract may be rescinded or terminated by any participating local unit before the stated date of termination.
- (b) The manner of employing, engaging, compensating, transferring, or discharging personnel required for the economic development project to be carried out under the contract.
- (c) The fixing and collecting of charges, rates, rents, or fees, where appropriate, and the adoption of ordinances and their enforcement by or with the assistance of the participating local units.
- (d) The manner in which purchases shall be made and contracts entered into.

⁴⁰ MCL 124.23.

⁴¹ MCL 124.23.

- (e) The acceptance of gifts, grants, assistance funds, or bequests.
- (f) The manner of responding for any liabilities that might be incurred through performance of the contract and insuring against any such liability.
- (g) Any other necessary and proper matters agreed upon by the participating local units. (Emphasis added)

Certainly MCL 124.26 (especially (g)) highlights the broad scope of terms that the local units can agree upon and the overall broad scope of PA 425.

MCL 124.27 provides for just a few mandatory contract provisions as follows:

- “(a) The length of the contract.
- (b) Specific authorization for the sharing of taxes and any other revenues designated by the local units. The manner and extent to which the taxes and other revenues are shared shall be specifically provided for in the contract.
- (c) Methods by which a participating local unit may enforce the contract including, but not limited to, return of the transferred area to the local unit from which the area was transferred before the expiration date of the contract.
- (d) Which local unit has jurisdiction over the transferred area upon the expiration, termination, or nonrenewal of the contract. (Emphasis added)

These contract provisions are essential and once again unambiguous. These provisions are clearly intended to help establish a contract that addresses critical terms and the inclusion of these terms will help prevent legal disputes down the road. These terms also address when the contract will be “in effect” and what happens to the transferred area after the contract is in effect.

MCL 124.28 addresses the jurisdiction over transferred property and provides:

“Unless the contract specifically provides otherwise, property which is conditionally transferred by a contract under this act is, for the term of the contract and for all purposes, under the jurisdiction of the local unit to which the property is transferred.”

This section provides the local units broad authority to contract for less than all jurisdiction to be transferred. This would clearly entail cooperatively agreed upon legislative decisions not within the purview of the State Boundary Commission.

MCL 124.30 goes on to provide in relevant part that:

“The conditional transfer of property pursuant to a contract under this act takes place when the contract is filed in the manner required by this section. . . The contract or a copy of the contract certified by that county clerk or by the secretary of state is prima facie evidence of the conditional transfer.” (Emphasis added).

Plainly and conclusively, once the contract is properly filed it is “in effect.” The conditional transfer takes place. This coupled with the length of the contract in MCL 124.27(a) make it very easy to determine when the contract is “in effect”. Further, the filed contract is prima facie evidence of the conditional transfer. There is no ambiguity.

The preemption of annexation or other transfer with regard to the area covered in the PA 425 contract is contained in MCL 124.29 which as previously stated provides that:

“While a contract under this act is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under the contract.” (Emphasis added)

As stated above, as part of the comprehensive statutory scheme, once the PA 425 contract is filed properly, it is very simple to know when the contract is in effect and annexation preempted. Such determination does not require or authorize the State Boundary Commission to hold hearings regarding the validity of the PA 425 contract. Further, the common meaning of “in effect” should control.⁴² Nothing could be more common than a search of the phrase “in effect” at www.google.com. Google defines “in effect” as meaning “in operation; in force” and is “used to convey that something is the case in practice, even if not formally acknowledge to be so.” As applied to MCL 124.29, it is clear that once the PA 425 contract is operational (i.e., within its term of contract and properly filed), no further review is required for the annexation preemption to be effective. The preemption would remain in place as long as the PA 425 contract is operational. The State Boundary Commission has no jurisdiction to review the validity of a PA

⁴² Briggs Tax Services, supra, 77.

425 contract that is operational in practice. The Court of Appeals, however, in Casco Twp, supra, at 398-399 inappropriately makes an unsubstantiated quantum leap regarding MCL 124.29 by indicating that “in effect” necessitates a valid contract and therefore the State Boundary Commission is entitled to review and determine its validity. The Court of Appeals cites no support for this contention regarding “in effect”, just a conclusory opinion which is in fact untrue. Moreover, the lack of jurisdiction by the State Boundary Commission to consider the validity of a PA 425 contract is apparent from actually looking at the specific words of “in effect” and also from broadening the scope to consider the intent of the entire PA 425 scheme. Nothing in the entire comprehensive statutory scheme for entering into interlocal agreements for the transfer of jurisdiction of property between cities, townships and villages specifically or by inference provides for review of these contracts by the State Boundary Commission to determine their validity.

Nowhere in PA 425 does it provide for the Boundary Commission’s involvement in executing PA 425 agreements, as the legislature has removed its annexation jurisdiction from these conditional transfers. The legislature could have provided many limitations on the effect of a conditional transfer with respect to subsequent annexation. Amicus Curiae submits that such limitations were not reserved in PA 425 as it was the intent clear of the legislature to emphasize cooperative jurisdictional transfers and provide plenary broad authority to accomplish the same. This intent is clearly expressed in the comprehensive statutory scheme.

It is significant that PA 425 was enacted by the state legislature after the Boundary Commission Act with obvious knowledge of the existence of the Boundary Commission Act and the authority vested therein. It would have been a simple matter for the State Legislature to grant review powers or superintending authority over PA 425 conditional transfer contracts if it had

desired. This, however, would have completely thwarted the legislative purpose of the “cooperative approach to the transfer of property between local units of government” as espoused by the legislature in its comments previously cited under the heading “The Apparent Problem” and would have placed the affected parties back on the battlefield of contentious annexation proceedings.

Finally, in order to properly understand the specious nature of the Court of Appeals analysis set forth in Casco Twp, it is important to highlight the main reasoning that the court used in making its decision that the State Boundary Commission had jurisdiction. First as noted above, the Court of Appeals started with an incorrect assumption regarding the term “in effect” and then jumped directly to the State Boundary Commission jurisdiction. Second, the Court of Appeals also relied upon Shelby Charter Twp, *supra*. It is important to note that in Shelby Charter Twp the issue of jurisdiction of the State Boundary Commission was not brought forward and considered by the Court. Shelby Charter Twp simply reviewed the charter township annexation exemption criteria found at MCL 42.34(1)(f). MCL 42.34(1)(f), requires as one of the annexation exemption criteria that the charter township “provides water or sewer services, or both, by contract or otherwise.” The review that occurred in Shelby Charter Twp was quite different than reviewing the validity of a PA 425 agreement. The review in Shelby Charter Twp was regarding a statutorily ambiguous exemption requirement. MCL 42.34(1)(f) did not specify that the nature, quantity or location of such water or sewer service which left an ambiguity in the application of this exemption provision. On this basis, the State Boundary Commission held that the minimal utility services provided by the township were insufficient to comply with this condition for exemption.

Such ambiguity or lack of clarity does not exist under the language of PA 425. In this case, the State Boundary Commission was not determining an ambiguity with regard to application of an exemption criteria but, rather, the actual validity of PA 425 contract terms. Instead, in the case at bar, the only consideration should be is the very simple determination of whether the PA 425 contract is “in effect” or otherwise operational. PA 425 is a comprehensive statutory scheme with very specific defined provisions, leaving no room for ambiguity. The term economic development project is clearly defined. Further, MCL 124.29 and MCL 124.30 operate to clearly define when a PA 425 contract is “in effect.” Given this statutory framework, there is no role for the State Boundary Commission to muscle in and take over review of the terms in the PA 425 contract. To determine when the preemption applies the State Boundary Commission need only determine if the PA 425 contract is in effect/operation.

Challenges to the validity of PA 425 contracts should be consistent under all circumstances and would fall within the original de novo jurisdiction of the circuit court.⁴³ The Court in Casco Twp was incorrect regarding the breadth of State Boundary Commission review. Remember in fact, MCL 124.29 preempts all annexations and other transfers, many of which do not go through the State Boundary Commission (i.e., village annexation of township territory, most charter township annexations, detachments of territory from cities and villages, and Urban Cooperation Act agreements). There is only one intended forum for original review of PA 425 contracts and that would be circuit court.

E. THE JURISDICTIONAL ARGUMENTS OF APPELLEES’ ARE UNPERSUASIVE.

(1) The State Boundary Commission Brief on Appeal

In its brief on appeal, the Michigan Attorney General argued that,

⁴³ Statement of Amicus Interest and Introduction, supra, Fn 13.

“[t]he plain text of MCL 124.29 shows that the SBC necessarily must consider the validity of the ‘Act 425 Agreements.’ When the SBC has a petition before it, as here, it must also determine whether the petition is blocked by a valid ‘Act 425 agreement.’ See MCL 124.29 (‘While a [Act 425 agreement] is in effect, another method of annexation or transfer shall not take place for any portion of an area transferred under contract,’). Simply put the SBC needs to determine whether there is an agreement ‘in effect’ before it can resolve a petition for annexation”⁴⁴

It its first two sentences, the Attorney General misinterprets the plain language of MCL 124.29. Nowhere in MCL 124.29 appears the words “valid” or “validity”; rather, MCL 124.29 states that another method of annexation or transfer shall not take place while a contract under PA 425 is “in effect.” If the legislature wanted to use different words (i.e. valid), it could have. The Attorney General fails to distinguish the difference between empirically determining that a contract is “in effect/operational” (i.e., filed properly and within the effective date) and considering the validity of the contract terms.

Article 6 of the Michigan Constitution of 1963 provides, in part, that, “[t]he circuit court shall have original jurisdiction in all matters not prohibited by law.” Furthermore, MCL 600.605 states that,

“Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.”

Neither PA 425, nor the Michigan Constitution, nor any other statute including PA 191, grants the State Boundary Commission jurisdiction to review the validity and subsequently invalidate a contract between intergovernmental units regarding the conditional transfer of property. Moreover, the unambiguous and plain language of MCL 124.29 immediately divests the State Boundary Commission of annexation jurisdiction over a conditionally transferred portion of

⁴⁴ State Boundary Commission, Brief on Appeal, page 15.

property contained in a PA 425 contract while the contract is “in effect”. Nowhere in PA 191 is the State Boundary Commission charged with the authority to determine the validity of contracts and find void a binding legal contract between municipalities. The Court of Appeals has held that “[a] statute that grants power to an administrative agency must be strictly construed and the administrative authority drawn from such statute must be granted plainly, because doubtful power does not exist.”⁴⁵ Allowing the State Boundary Commission to interfere with legislative decisions regarding economic development projects and intergovernmental contracts pursuant to Act 425 cannot be found through strict construction of the State Boundary Commission’s administrative authority and is clearly impermissible.

Amicus Curiae submits that the Legislature would have provided for State Boundary Commission review language in PA 191 PA or PA 425 if it intended the State Boundary Commission to have such power. The Legislature is certainly aware that administrative authority is strictly construed. Based upon the historical development of PA 425 and its plain language it is clear that the Legislature intended jurisdiction to review the validity of a PA 425 contract to fall under the original jurisdiction of the circuit court. The words “in effect” were not an invitation for State Boundary Commission review.

(2) The City of Cadillac Brief on Appeal

The City of Cadillac (hereinafter the “City”) argues that requiring that a “party seeking annexation should file an independent circuit court action for review of the agreement” is a “solution” that is “unworkable”.⁴⁶ This is a fallacy. As previously indicated, the State Boundary Commission has no legislative authority or standards to invalidate a PA 425 contract and, instead, the circuit court is the appropriate court of original jurisdiction to hear a PA 425 contract

⁴⁵ Lake Isabella Dev, Inc v Vill of Lake Isabella, 259 Mich App 393, 401; 675 NW2d 40 (2003).

⁴⁶ City of Cadillac, Brief on Appeal, page 16.

dispute. Having only the circuit court review the validity of a PA 425 contract would actually streamline the process. Allowing PA 425 contract terms to be reviewed additionally by the State Boundary Commission in fact creates an unworkable and uneconomical situation where parallel proceedings are taking place. The divisiveness in this case at bar is a prime example of this and supports why historically PA 425 was intended to remove jurisdiction from the State Boundary Commission.

The City goes on to argue that “administrative agencies, rather than courts, determine matters that are within their area of expertise...”.⁴⁷ The City cites Travelers in support of this proposition.⁴⁸ The City reliance on Travelers to support the position that the State Boundary Commission can invalidate a PA 425 contract is misplaced. In Travelers, the Court of Appeals held that:

“The circuit court did not err in concluding, as a matter of law, that the doctrine of primary jurisdiction was not waivable, and that the mpsc had primary jurisdiction over Travelers' remaining breach of contract claim. First, the doctrine of primary jurisdiction can be raised “*whenever* enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body.” Rinaldo's, *supra* at 71, 559 N.W.2d 647, citing Western Pacific, *supra* at 64, 77 S.Ct. 161 (emphasis added). This language, which Michigan has adopted, Diamond Mortgage Co., *supra* at 613, 327 N.W.2d 805 does not place a restriction on when the doctrine may be asserted.¹⁹ In Western Pacific at 64, 77 S.Ct. 161 the United States *207 Supreme Court made clear that “in such a case, the judicial process is suspended pending referral of such issues to the administrative body for its views.” More recently, the same Court has described the effect of the doctrine as requiring “the [trial court] to **746 ... stay[] further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.” Reiter v. Cooper, 507 U.S. 258, 268, 113 S.Ct. 1213, 122 L.Ed.2d 604 (1993). Thus, the Court explained, “[r]eferral of the issue to the administrative agency does not deprive the court of jurisdiction; *it has discretion* either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice.” *Id.* at 268–269, 113 S.Ct. 1213 (emphasis added), citing Carnation Co. v. Pacific Westbound Conf 383 U.S. 213, 222–223, 86 S.Ct. 781, 15 L.Ed.2d 709 (1966); Mitchell Coal

⁴⁷ City of Cadillac, Brief on Appeal, page 14.

⁴⁸ Travelers Ins Co v Detroit Edison Co., 465 Mich 185, 197; 631 NW2d 733 (2001)

& Coke Co. v. Pennsylvania R Co., 230 U.S. 247, 266–67, 33 S.Ct. 916, 57 L.Ed. 1472 (1913); Jaffe, supra at 1055.”⁴⁹

In Travelers, the Court of Appeals further stated that, “...consistent with a sense of deference to agency expertise, the circuit court reasoned that Travelers' claim was one that was anticipated and controlled by the tariff, and that application of §4 of the tariff would depend on a factual inquiry best left to the determination of the mpsc.”⁵⁰

In Travelers, the Court of Appeals reasoned that the Michigan Public Service Commission (hereinafter “MPSC”) had specialized or unique knowledge regarding its tariff and in interpreting its own rules the MPSC made was the appropriate venue to decide the contract dispute. Simply put, a circuit court may hear tort actions against public utility companies but it does not preclude the MCPS of jurisdiction over matters that come within its authority.⁵¹ Moreover, the MPSC “possesses the degree of expertise with regard to the purpose and effect of the governing tariffs to decide whether the presumptively valid tariff provisions apply to particular facts that do not constitute tortious conduct or a violation of the code or tariff.”⁵² Because of this, the Court of Appeals held that the contract dispute in Travelers fell within the jurisdiction of MPSC.⁵³

The facts and reasoning in Travelers are substantially different than those in the case at bar. In Travelers, the MPSC interpreted a contract regarding its own tariff. The MPSC rightfully could be granted the authority by a circuit court to interpret its own rules. This is completely understandable, yet drastically different from the case at bar. The State Boundary Commission is not interpreting its own administrative rules or policies. Adoption of a PA 425 contract has

⁴⁹ Travelers, supra, 207-08.

⁵⁰ Travelers, supra, 207.

⁵¹ Travelers, supra, 202.

⁵² Travelers, supra, 207.

⁵³ Travelers, supra, 211.

nothing to do with the State Boundary Commission. PA 425 involves proposed economic development projects contracted by local units through an intergovernmental agreement. PA 191 does not mention PA 425 nor does it list a set of criteria for invalidating a PA 425 contract that is in effect.

The State Boundary Commission is not part of the process when contracting local units formulate an economic development project or establish the parameters of an intergovernmental agreement for the conditional transfer of property. By invalidating a PA 425 contract, the State Boundary Commission is interfering with the Townships' legislative decisions regarding economic development and replacing such decisions with its own opinions. Clearly, the Legislature would have made the State Boundary Commission part of the PA 425 contract process if it intended for the State Boundary Commission to review the validity of PA 425 contracts.

Nothing in PA 425 or PA 191 imposes a regulatory duty on the State Boundary Commission to interpret or nullify a PA 425 contract. Nothing in PA 191 requires a State Boundary Commission member to have a basic understanding of PA 425, contract formation, PA 425 economic development projects or contract invalidation. In other words, PA 191 does not specifically require any of its State Boundary Commission members to have a unique or specialized knowledge of PA 425 contracts.

The Legislature was well aware of the State Boundary Commission, its functions and role, and limitations when it enacted PA 425. Because of this, the Legislature specifically enacted MCL 124.29 which specifically divested the State Boundary Commission of jurisdiction when a PA 425 contract is in effect. As a result, all challenges regarding the validity of a PA 425 contract should be litigated in the circuit court, the court of original jurisdiction, because neither

PA 425 nor PA 191 specifically require otherwise . Simply put, as soon the State Boundary Commission is aware that a PA 425 Agreement is in effect/operational, the same should immediately reject the annexation petition until such time as the merits of the PA 425 contract are litigated through the circuit court. This is exactly what PA 425 and, more specifically, MCL 124.29 require.

3. **Teridee's Brief on Appeal.**

Appellee Teridee points to Shelby Township, supra, to support its argument that the State Boundary Commission has the jurisdiction and authority to invalidate the Townships' PA 425 Agreement.⁵⁴ Amicus Curiae herein previously addressed Shelby Township, and the reasons for its inapplicability, however this issue can be further explored. In Shelby Township, the question before the Michigan Supreme Court was “whether the State Boundary Commission exceeded its statutory authority when it determined that the Charter Township of Shelby was not exempt from annexation under M.C.L. §42.34(1)...”.⁵⁵ In Shelby Township, the State Boundary Commission held that Shelby Township was not exempt from annexation because neither the amount of water services nor the amount of sewer services it provided met the required standard for exemption under MCL42.34(1)(f).⁵⁶ The State Boundary Commission determined Shelby Township provided water and sewer services to only 6% of its territory.⁵⁷

“The commission found that neither the amount of sewer services, nor the amount of water services, provided by Shelby met the standard set forth in §34(1)(f), ‘[p]rovides water or sewer services, or both, by contract or otherwise.’ The commission consequently held that Shelby was not exempt from annexation under § 34(1).”⁵⁸

⁵⁴ Appellee Teridee, Brief on Appeal, page 19.

⁵⁵ Shelby Charter, supra, 52.

⁵⁶ Shelby Township, supra, 52.

⁵⁷ Shelby Township, supra, 54-55.

⁵⁸ Shelby Township, supra, 55.

The State Boundary Commission made its decision based off of empirical data as required by the specific criteria; it did not act to invalidate an intergovernmental conditional land transfer agreement that was “in effect” or otherwise attempt to invalidate an operational local water or sewer agreement. The State Boundary Commission determined that Shelby Township was not exempt from annexation because it did not meet the standards of MCL 42.34(1)(f).⁵⁹ MCL 42.34 protects charter townships from annexation if, coupled with other criteria, the charter township “[p]rovides water or sewer services, or both, by contract or otherwise.”⁶⁰ Ultimately, this Honorable Court reversed the Court of Appeals, holding that the State Boundary Commission correctly interpreted MCL 42.34(f) to require more than *di minimus* water and sewer service within the charter township territory in order to receive annexation protections.⁶¹

In reaching this decision, this Honorable Court determined that MCL 42.34 was ambiguous because:

“The language ‘[p]rovides water or sewer services, or both ...’ is susceptible to more than one meaning. The language could be understood as meaning that the provision of ‘any’ such service is sufficient. The language could also be understood to mean that a charter township must provide ‘complete’ water or sewer services, that is, to all its residents at the optimal level. Since the statute is reasonably susceptible to more than one meaning, it is not unambiguous.

When a statute is ambiguous and susceptible to two or more constructions that could cause reasonable minds to disagree as to its meaning, the statute must be interpreted. City of Lansing v. Lansing Twp., 356 Mich. 641, 649, 97 N.W.2d 804 (1959). Therefore, we must determine whether § 34(1)(f) requires no more than the provision of any water or sewer services.”⁶²

Shelby Township is fundamentally different from the case at bar. It involved interpretation of ambiguous criteria that necessarily required a determination regarding how much water or sewer

⁵⁹ Shelby Township, *supra*, 53-54.

⁶⁰ MCL 42.34(f).

⁶¹ Shelby Township, *supra*, 77.

⁶² Shelby Township, *supra*, 72-73.

services are provided. This criteria was specifically created by the Legislature and it requires analysis by the State Boundary Commission to determine whether more than di minimus sewer and water services are provided. The State Boundary Commission, however, would not be invalidating any sewer or water contracts (or other contracts) between municipalities that are in effect. On the other hand, the prohibitions against annexation or other transfers under MCL 124.29 where a PA 425 contract is in effect is not ambiguous and does not involve any consideration regarding the validity of the contract. Once filed under MCL 124.30, it is “in effect” or otherwise operational. The State Boundary Commission cannot consider an annexation petition over the subject property until the contract is no longer “in effect.” PA 425 does not vest the State Boundary Commission with any jurisdiction to hear disputes regarding intergovernmental conditional transfers of property. Simply put, annexation matters involving the criteria set forth in MCL 42.34, such as the extent of water or sewer service falls within the purview of the State Boundary Commission because the statute specifically intends such review.

Additionally, Teridee argues that where the “SBC must blindly accept anything labeled as an ‘Act 425 Agreement’ as a complete bar to its authority to consider a petition for annexation with no ability to determine whether the purposed agreement meets the statutory criteria of Act 425...would effectively end annexation in this State.”⁶³ This statement by Teridee is hyperbole at its worst. It is still within the circuit court’s jurisdiction to decide whether a contract satisfies the law.⁶⁴ It is within the circuit court’s jurisdiction to determine whether a contract is valid under the parameters of PA 425 and to strike down an invalid agreement. If the parties are involved in frivolously defending a challenge of a bogus contract then the parties would be subject to sanctions under MCF 211.4(F). Additionally, as previously set forth, PA 425 provides for a

⁶³ Appellee Teridee Brief on Appeal, page 22.

⁶⁴ Cruz v State Farm Insurance Company, 466 Mich 588; 648 NW2d 591 (2002).

statutory process to be followed in creating the contract that includes public hearings and a right of referendum. These are further safeguards to ensure that a lawful contract is developed between the parties. The agreement must also be publically filed with the County Clerk and Secretary of State.⁶⁵

Teridee ignores and in fact does not even reference the unambiguous and plain language of MCL 124.29 and MCL 124.30. In this case, upon receipt of the application to annex, the State Boundary Commission should have immediately rejected the same because a PA 425 contract was “in effect.” Any disputes to the contract’s validity should be litigated through the circuit court. As the Cruz case held, the circuit court has general jurisdiction to strike down an invalid agreement. Consequently, Appellees must challenge the validity of the PA 425 contract in circuit court, not the State Boundary Commission. If a circuit court subsequently declares a PA 425 contract invalid, an annexation petition may be submitted and accepted by the State Boundary Commission because the PA 425 contract is no longer in effect. MCL 124.29 is not an invitation to the State Boundary Commission to review and invalidate the terms of a PA 425 contract, but quite the contrary. If the legislature intended the State Boundary Commission to be the reviewing entity over the validity of PA 425 contracts, it would have put this language in the statute.

⁶⁵ MCL 124.30.

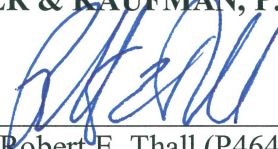
CONCLUSION

For the reasons stated herein, the course of jurisprudence with regard to the State Boundary Commission's lack of jurisdiction to review the validity of PA 425 agreements must be set straight and the determination of jurisdiction in the Casco Twp case overruled.

Wherefore, Amicus Curiae respectfully requests that this Honorable Court overrule the determination of jurisdiction in Casco Twp and reverse the decision in this case.

Dated: August 26, 2016

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